UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.78
29 April 1991

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 78th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 April 1991, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Chile (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.78/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-11943/3125B

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Chile (continued) (CAT/C/7/Add.9)

1. Mr. GARRETON (Chile) said that, judging by the Committee's questions at the previous meeting, he should make it clear that the report under consideration (CAT/C/7/Add.9) was intended merely as a supplement to the initial report submitted in 1989 by the previous Government (CAT/C/7/Add.2). Although the political conditions were now very different, the situation with regard to the implementation of the Convention was much the same and his Government had not therefore felt it necessary to repeat the information contained in the earlier report.

2. The legislation currently in force in Chile fell into three categories. The first category included laws which had been adopted before the military coup of September 1973 and which had been ignored or distorted, but not repealed, by the military dictatorship. The second category included laws which had been adopted during the period of military leadership or, in other words, between September 1973 and March 1990. Much of that authoritarian legislation was still in force, since, like any other legislation, it could be changed only by a decision of Parliament, and that was a very slow process. The third category included laws which had been adopted since the new Government had taken office in March 1990. Many of those laws dealt with human rights and the supplementary report had concentrated on that category.

3. Commenting on the implementation of individual articles of the Convention, he said that the Convention formed part of internal law in Chile: in the case of a conflict between internal law and the Convention, it was the Convention which prevailed. The new Government had withdrawn all but one of the reservations made by the previous Government on its ratification of the Convention; the remaining reservation concerned the settlement of disputes between States parties. Chile had not recognized the competence of the Committee to consider communications from individuals, as provided for in article 22 of the Convention.

4. With reference to article 1, paragraph 1, of the Convention, the concept of torture was defined in the Penal Code, which dated from 1875. The penalty for torture was a prison sentence of up to five years, which was consistent with the rest of the 1875 Code; for instance, the maximum penalty for murder was also five years.

5. The measures which Chile had taken to implement article 2 of the Convention were described in the 1989 report and there were no plans to amend them at present. Chilean law limited the use of detention incommunicado, during which torture was more likely to occur. There were two situations in which detention incommunicado was allowed: a recidivist might be held incommunicado as an additional punishment, but in practice that was taken to mean that the prisoner was forbidden to have visitors and that he was still free to mix with other inmates. The maximum period of such a punishment had been reduced from six to three months. In the second situation, a judge could order a prisoner to be detained incommunicado in order to prevent him from contacting criminal accomplices or family members. Detention incommunicado

had not been ordered for more than 10 days until the military dictatorship, when such detention for up to 200 days at a time had become common. The new Government had introduced measures to limit detention incommunicado to 15 days initially, although it could be extended, and prisoners had the right to a daily visit of half an hour from their lawyer and to regular examinations by a physician, who was obliged to report to the courts on the prisoner's condition.

6. In connection with article 2, paragraph 2, of the Convention on the inadmissibility of a state of war or public emergency as a justification for torture, he had to admit that the permanent state of emergency declared by the military dictatorship, while not actually authorizing torture, had created conditions in which it could occur. The state of emergency had now been lifted and he was proud to say that, even after recent acts of terrorism in Chile, there had been no calls for it to be reinstated.

7. Article 2, paragraph 3, of the Convention stated that an order from a superior officer could not be invoked as a justification of torture. The Chilean Military Code of Justice contained just such a provision: a subordinate was not held responsible for an act of torture if he had queried the order to perform it and a superior officer had confirmed the order. The new Government had withdrawn the reservation concerning article 2, paragraph 3, formulated by its predecessor, so that a subordinate was henceforth responsible for acts of torture, even if they were carried out under orders from a superior. However, that provision was not retroactive.

8. The new Government had also withdrawn its reservation concerning the principle of non-refoulement embodied in article 3 of the Convention. No special legislation was necessary to establish the principle in Chilean law, since it was contained in the Convention, which had been incorporated into internal law. In the same way, the provision of article 4 of the Convention that all acts of torture should be considered offences under criminal law was also automatically valid under Chilean law.

9. The situation with regard to article 5 of the Convention was still as described in Chile's 1989 report. In respect of article 6 of the Convention dealing with the detention and extradition of alleged torturers, the Chilean authorities would not detain or extradite an alleged torturer unless they had received a request from the State where the torture was alleged to have occurred. If Chile refused the extradition request for any reason, it would try the alleged offender in its own courts, as provided for in article 7. Acts of torture were considered extraditable offences for the purposes of extradition treaties with other States, as provided for in article 8. The provisions of Chilean law concerning article 9 were as described in Chile's 1989 report.

10. Chile's implementation of article 10, dealing with education and information for law enforcement officers, medical personnel, etc., was clearly a source of some concern to the Committee. A number of different services were involved, including the armed forces, the Carabineros - who were subordinate to the Ministry of Defence - the Police Department, prison officials and physicians. The armed forces no longer had the authority to detain anyone, except military personnel who committed an offence on military premises. Because of the continuing tension between the civilian and military

authorities in Chile, he did not know about the training given to the armed forces and the Carabineros, but there were certainly plans to improve the training of members of the Police Department.

11. Members of the Committee had asked several questions about the presence of physicians during interrogations and about torture during the military régime. In fact, lawyers had often been present during interrogations, as well, questioning suspects and acting as public prosecutors in subsequent trials. There was now a great deal of debate in Chile about how such offenders should be dealt with.

12. Medical schools provided training in medical ethics, including the subject of torture, and physicians were aware of their obligation not to participate in torture. Moreover, physicians taking part in the questioning of suspects were now attached to the service carrying out the investigation - the Carabineros or the Police Department, respectively - and had accordingly shared in whatever human rights training that service received.

13. Members of the Committee had also asked several questions about the criminal responsibility of a physician who connived at acts of torture. In such a situation, the physician bore criminal responsibility for that connivance, along with the other accessories to the act, such as the torturer's superior officers and the authorities who made use of confessions obtained under torture.

14. With reference to Mr. Sorenson's comments, he had to say that there had been little success in the campaign to prosecute physicians who had connived at acts of torture. For one thing, it had been very difficult to identify the persons responsible; a person alleged to have tortured a prisoner in 1976 had not been brought to court until 1986, by which time a general amnesty had been declared and conviction had been impossible.

15. In addition to bearing criminal responsibility for their connivance at acts of torture, professionals such as physicians and lawyers were answerable to their professional associations. Unfortunately, under the military dictatorship, compulsory membership of the professional associations had been abolished, and that had considerably weakened their influence. Earlier in 1991, a physician who had been condemned by the physicians' professional association for his collaboration with the military régime had been killed in an act of revenge. While such an act could not be condoned under any circumstances, it showed that the opinion of the professional associations did carry some weight.

16. With regard to article 11, he had already referred to conditions of detention and the rules governing detention incommunicado. There had been no further changes in the situation described in the 1989 report.

17. In respect of articles 12 and 13 on the investigation of allegations of torture, there had been no changes in the situation described in the 1989 report. The courts were currently investigating over 35 complaints of torture under the military dictatorship, but they had to take their turn among the many other cases being considered and no verdict had yet been reached in any of them.

18. As to article 14 on compensation for the victims of torture, there were provisions both of a permanent nature and of a transitory nature intended specifically for persons tortured during the military dictatorship. In the first case, torturers were considered to bear civil liability for their actions and their victims were entitled to claim compensation on the same basis as victims of any other criminal act. A victim could not claim compensation unless his torturer had been convicted of the act of torture in a criminal court. In some cases, the State was deemed to bear civil liability for the criminal acts of its agents and would therefore have to pay compensation; however, such a claim could not be made unless the person responsible for the act had been convicted in a criminal court. Those principles had been embodied in Chilean legislation for more than a century.

19. A Government commission had recommended temporary measures to compensate victims of serious human rights violations during the military dictatorship. Accordingly, a bill was currently before Congress to provide compensation for the victims of torture, disappearance or summary execution, or their relatives. However, it would not be possible to compensate all the thousands of victims of human rights violations straight away. Those who were in need of specialized medical treatment as a result of torture and who were named in the reports of non-governmental organizations were entitled to such treatment, but victims who had not been physically injured did not receive compensation.

20. In connection with article 15, he said that the general rule in the Code of Criminal Procedure regarding the validity of confessions was that they must be voluntary, credible and consistent with the facts of the case. A defendant could not be convicted solely on the grounds of a confession and confessions elicited under torture were not considered valid, although the onus was on the accused to prove that torture had been applied. In retrials in civil courts of cases heard originally in military courts between 11 September 1978 and 11 March 1990, the judge was required to evaluate a confession of participation in an offence and a subsequent retraction on the grounds that the confession had been obtained under duress.

21. The rules of habeas corpus had been long established in Chilean law, but had been suspended during the military dictatorship. Judicial reform was currently under way in the form of a bill to be submitted to Congress with the aim of ensuring a truly independent judiciary. To guarantee fairness in torture cases, the office of an ombudsman had been established and the ombudsman would have primary responsibility for processing such cases.

22. With regard to the question of military courts, he pointed out that most human rights violations had come within the scope of military justice during the dictatorship and had thus been tried in military courts, with no guarantee of impartiality. The jurisdiction and composition of those courts was currently under review, but the political situation did not as yet admit of their abolition. Progress in the field of judicial reform was being hindered by the fact that the majority of the members of the Constitutional Court were still identified with the previous régime.

23. Turning to the issue of policing, he said that, traditionally, both the Carabineros and the Police Department had been responsible to the Ministry of the Interior, but, during the period of the junta, responsibility had shifted to the Ministry of Defence. A decision had been taken in principle to revert to the previous system, but that would require a change in the Constitution.

24. Ms. CHANET asked about the principles governing sentencing in cases of aggravated homicide, about the practice of detention incommunicado and about the likely effect on human rights cases of an amnesty.

25. Mr. GARRETON (Chile) said that, traditionally, an exaggerated emphasis on property rights had ensured that heavier penalties were imposed for aggravated homicide and murder accompanied by robbery. It was to be noted in that connection that Congress had so far failed to abolish the death penalty.

26. Detention incommunicado, understood as deprivation of contact with the outside world, could be applied only to convicted prisoners and not to persons in pre-trial detention. When in prison, all prisoners were entitled to medical services and to contact with a lawyer.

27. Decree Law No. 1978 had been promulgated by the junta with the aim of procuring an amnesty for its own human rights offenders. Although many persons now believed that those responsible for such offences should be brought to trial, the complexities of the political situation in Chile were such that there was insufficient political will to bring about the repeal of Decree Law No. 1978.

28. Ms. DIAZ PALACIOS (Country Rapporteur) stressed the need for appropriate penalties for offences involving torture: torture resulting in death should be considered as an aggravating circumstance in cases of homicide.

29. Mr. GARRETON (Chile) said that the penalties in cases of torture ranged from 61 days to 3 years. Where torture resulted in injury, they were from 3 years and 1 day to 5 years and, in cases of torture resulting in death, the minimum sentence was 5 years and 1 day. It should be noted that torture with intent to kill was classified as murder, but torture aimed at eliciting information, but resulting in death, was not regarded as premeditated murder.

30. Mr. MIKHAILOV said that, in Chile, the criterion for differentiating between torture and murder seemed to be premeditation, so that, in some cases, torture leading to death could be construed as the result of negligence.

31. Mr. BURNS said that the Government of Chile was to be congratulated on the efforts it had made during a very short period of time in office to restore the rule of law in that country. In particular, he welcomed the decision to remove the argument of superior orders as a defence against charges of inflicting torture. He was also pleased to note the Chilean representative's explanation concerning detention incommunicado: a person could not be regarded as being held incommunicado if he had access to a lawyer and to medical treatment.

32. It had been his impression from the Chilean representative's comments regarding confessions that the applicable rule in Chile did not fully meet the stringent requirements laid down in article 15 of the Convention.

33. Mr. GARRETON (Chile) said that, under Chilean law, a confession would have value as evidence only if other evidence confirmed participation in the offence.

34. Mr. SORENSEN pointed out that present-day torturers used sophisticated methods that seldom left any physical traces of the torture inflicted. If psychological sequelae could be proven, but there was no evidence of physical torture, was the ill-treatment regarded as torture with injury?

35. Mr. GARRETON (Chile) said that, although Chile's Penal Code dated from a time when the use of the term "mental injury" had not been customary, it was accepted that injuries could be both physical and mental in nature. If torture left psychological sequelae, injury resulted just as if the sequelae were physical. Of course, it was often difficult for the victim's lawyer to establish a cause and effect relationship between the act of torture and such an injury.

36. The CHAIRMAN asked whether Mr. Garreton could confirm that no further measures had been taken since the submission of Chile's 1989 report to ensure the implementation of article 11 of the Convention.

37. Mr. GARRETON (Chile) said that no new legislation had been enacted other than that governing visits by lawyers and doctors, to which he had already referred. However, the International Committee of the Red Cross had made a number of suggestions to the previous Government, some of which it had implemented and which remained in force. The fact that ICRC had decided to close its representation in Chile probably reflected the fact that torture had become less of a problem there. He stressed that the Prison Code currently in force dated from 1928 and contained many rules that social advances had rendered obsolete. A group of experts with extensive knowledge of the work of the United Nations in that field was currently preparing a new prison code.

38. Mr. SORENSEN, supported by Mr. MIKHAILOV, said that the report by Chile was a milestone in the investigation of torture. The Committee had received satisfactory oral replies concerning articles 2 to 16; in his view, it should now accept the report and compliment Chile on the speed with which democracy was being restored.

39. Mr. BURNS said that, in his view, Chile should make torture a separate crime for which specific penalties would be provided rather than merely incorporating the offence in the Penal Code as an aspect of other crimes such as attempted homicide and assault. With regard to Mr. Garreton's second reply concerning article 15 of the Convention, he was still not convinced that Chile's internal law procedure regarding the admissibility of confessions met the requirements set out in that provision.

40. The CHAIRMAN, speaking as a member of the Committee, stressed that, although much progress had been made, Chile's transition from a dictatorial to a democratic régime was not yet complete. Certain provisions of the Convention had yet to be fully implemented. With regard to article 4, paragraph 2, the question arose whether the penalty provided for torture was "appropriate". In his view, it was not, especially if account was taken of the fact that one possible consequence of the offence might be the victim's death.

41. Article 6 was not applied exactly. Mr. Garreton had said that, even if the author of an act of torture committed abroad was present in Chilean territory, the Government could do nothing unless a request for extradition

had been received. However, article 6 stipulated that the person in question must be detained in order to give the requesting State time to submit a request for extradition.

42. With regard to article 14, he had been surprised to hear Mr. Garreton state that civil liability depended on criminal responsibility and that, consequently, if the alleged torturer had not been convicted, neither he nor the State would be liable to provide civil compensation. Yet the conditions for civil liability and criminal responsibility, and for individual and State responsibility, were very different, as was illustrated by the case of a torturer held not to be criminally responsible on the grounds of insanity. In such a case, the State could still be held liable to compensate the victim for the acts committed. As to article 15, he noted that, if a confession was obtained under torture, it was invalid, but that a court could accept the confession if the facts had also been established through other evidence.

43. It was clear that, in the process of democratization, not all State organs had made equal progress. The Government had advanced further than Parliament and perhaps further than the judiciary. That did not mean that the Chilean State was itself absolved from failure to comply with its obligations. It needed only one organ of the State to fail to comply with its obligations for the responsibility of the State to be engaged. The failure of the legislature or of the courts to implement the provisions of the Convention might excuse the Government; it did not, however, absolve the Chilean State. Nevertheless, the Government was to be congratulated on the progress it had made along the road to democracy.

44. Mr. GARRETON (Chile), replying to the Chairman's remarks on the State's liability to provide compensation, said that he had used the word "convicted" because it covered most eventualities. However, civil liability arose from the crime, not from the conviction. For example, if the torturer was dead, he could not be convicted: yet the State was liable by virtue of the commission of a crime by one of its agents. On the other hand, if the crime of torture was not proven, the State could not be held civilly liable.

45. Chile now had a democratic Government, but some of its structures were still undemocratic and did not yet reflect the will of the Government or of the people. To that fact were attributable the shortcomings of the process, which he had not attempted to conceal.

The meeting was suspended at 4.55 p.m., and resumed at 5.05 p.m.

46. Ms. DIAZ PALACIOS (Country Rapporteur) said that the written and oral information submitted by the representatives of Chile attested to the process of political and institutional transition the country was going through and also to the State's determination to comply with its commitments under the Convention. The members of the Committee commended the Chilean Government for its efforts to comply with the Convention. There had been an undeniable improvement in respect for human rights, and a drop in the number of allegations of torture over the past year. The detailed replies to members' questions provided a guarantee that the next report submitted by Chile would be fully adapted to the structure and contents of the Convention. That report should reflect practical progress achieved in legal reform and also in organizational and functional matters, such as the establishment of the post of ombudsman. The country rapporteurs also hoped that the suggestions made by

the Chairman and by Mr. Burns would be reflected in the report. They shared the view expressed in the additional report, that the practice of torture, which had been entrenched in Chilean society for the past 17 years, must cease immediately. They recognized the challenges facing the new democratic Government in its attempt to commit itself wholeheartedly to the implementation of the Convention, while having to reckon with institutions that were often still authoritarian.

47. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) joined Ms. Díaz Palacios in thanking the Chilean delegation for its cooperation with the Committee and for its concise replies which it had provided to members' questions and which had shed further light on the measures taken to ensure the implementation of the Convention. He wished Chile every success in its progress towards democratization, a process which he hoped would be completed as soon as possible.

The public meeting rose at 5.10 p.m.